

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 2000-005

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was docketed on October 7, 1999, upon the BCMR's receipt of the applicant's complete application for correction of his military record.

This final decision dated August 17, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a port securityman third class (PS3; pay grade E-4) in the Reserve, requested reinstatement to the grade of petty officer second class (PS2; pay grade E-5), retroactive to June 4, 1997.

SUMMARY OF RECORD AND SUBMISSIONS

On June 4, 1997, the applicant enlisted in the Coast Guard Reserve for eight years as a PS3 (port securityman third class; pay grade E-4). Prior to enlisting in the Coast Guard, the applicant had served in the Marine Corps from August 8, 1988 until August 7, 1994. The applicant stated that after separating from the Marine Corps he served in the [REDACTED] where he held the rank of sergeant (pay grade E-5). He stated that he executed an inter-service transfer from the [REDACTED] to the Coast Guard Reserve in pay grade E-4 (PS3).

The applicant claimed that he was treated unfairly when he was enlisted in the Coast Guard in June 1997 as a PS3. The applicant alleged that when he reported for training in the Coast Guard Reserve, he discovered that three other individuals who transferred from other Services into the Coast Guard were allowed to keep their E-5 pay grades. He stated that he was required to enlist in the Coast Guard as an E-4, even though he had more time on active duty and more law enforcement experience than the other three individuals who entered the Coast Guard as E-5s.

Views of the Coast Guard

On June 2, 2000, the Board received an advisory opinion from the Chief counsel of the Coast Guard recommending that the Board deny relief to the applicant.

The Chief Counsel stated that contrary to the applicant's allegations, there was no requirement to enlist the applicant in the Coast Guard Reserve as an E-5 simply

because he held that pay grade previously in another component of the military. The Chief Counsel stated that the Coast Guard Recruiting Manual makes clear that the decision to enlist recruits like the applicant at pay grades higher than E-1 is left to the discretion of the various District Commanders. According to the Chief Counsel, the applicant's District Commander was acting within the scope of his discretion.

The Chief Counsel stated that the applicant's allegation that three other individuals were able to retain their E-5 pay grade after transferring from another service is hearsay and not supported by any independent evidence. Even if true, the Chief Counsel stated that it would only confirm that such decisions are left to the discretion of the individual's District Commander.

With respect to the applicant's situation, the Chief Counsel stated that the applicant joined the Coast Guard with knowledge that he was enlisting as a PS3. He further stated as follows:

... Applicant's District Commander authorized Applicant's enlistment as an E-4, one pay grade above E-3 which is the highest grade a recruiter is authorized to enlist individuals into the Service. The Coast Guard need not speculate as to why the Applicant was not enlisted at the grade of E-5. Applicant has not overcome the strong presumption that his District Commander discharged his duties correctly, lawfully, and in good faith Moreover, Applicant has failed to provide the clear, cogent, and convincing evidence to overcome that presumption of regularity.

The Chief Counsel provided the following excerpts from Chapter 4 of the Coast Guard Recruiting Manual, COMDTINST M1000.2C:

a. Article D.1.a.(3): "Applicants who formerly held rates in pay grade above E-3 in the Marine Corps, Army, Air force, or Navy, including Reserve Components thereof, may be enlisted in pay grade E-3 by the recruiting officer, as long as vacancies for E-3 exist in the Reserve Unit according to its district commander. . . ."

b. Article D.1.a.(4): Recruiters may request authorization from the District Commander . . . to enlist otherwise qualified applicants in different or higher rates than authorized above. Each such request will be accompanied by preenlistment papers . . ."

c. Article D.1.a.(5): "Requests for authorization to enlist applicants as above will be referred by the District Commander . . . to a panel of three officers on active duty, who will consider the applicant's qualifications, number of dependents, mobilization potential and other pertinent factors and make appropriate recommendations for enlistment in a specific rate."

Applicant's Response to the Views of the Coast Guard

On June 5, 2000, a copy of the Coast Guard's views was sent to the applicant with an invitation for him to submit a response. He did not submit a response.

FINDINGS AND CONCLUSIONS

The Board makes the following findings of fact and conclusions of law on the basis of the applicant's record and submissions, the Coast Guard's submission, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The Coast Guard did not commit an error when it determined that the applicant should be offered the opportunity to reenlist as a port securityman third class (pay grade E-4). The applicant had the choice to accept or reject this opportunity. He chose to accept it. The applicant has not produced any evidence that the Coast Guard was required to reenlist him in the pay grade and rate previously held in another service.

3. The Coast Guard did not misapply its own rules or policies regarding the applicant. The applicant has not established that he should have been treated exactly the same as those he alleged were permitted to retain their E-5 pay grade when they enlisted in the Coast Guard after having served in another branch of the service.

4. Accordingly, relief should be denied.

ORDER

The application of
military record is denied.

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